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MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES,

IN COMPLIANCE

With a resolution of the Senate of the 13th October, 1837, in relation to the adjustment of claims to reservations under the 14th article of the treaty of 1830, with the Choctaw Indians.

DECEMBER 19, 1837.

Read, and ordered to be printed

To the Senate of the United States:

I transmit, herewith, a report and accompanying documents from the ecretary of War, which contain the information called for by a resolution f the 13th of October last.

WASHINGTON, *December* 18, 1837.

M. VAN BUREN.

DEPARTMENT OF WAR,
December 16, 1837.

SIR: In reply to the resolution of the Senate of the 13th of October last, alling for information in reference to the measures taken under the act of March 3d, 1837, authorizing the appointment of commissioners to adjust laims to reservations under the 14th article of the treaty of 1830, with the Choctaw tribe of Indians, I have the honor to lay before you a report of he Commissioner of Indian Affairs.

Very respectfully,
Your most obedient servant,
J. R. POINSETT.

To the PRESIDENT
Of the United States.

Blair & Rives, printers.

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WAR DEPARTMENT,
Office of Indian Affairs, December 16, 1837

SIR: In compliance with your direction of October 16th, I have the honor to submit a report upon the resolution of the Senate of the 13th of that month, calling for information respecting the proceedings that have taken place under the act of March 3, 1837, providing for the appointment of commissioners to adjust claims to reservations of land under the 14th article of the treaty of 1830, with the Choctaw Indians.

A board of commissioners was constituted by the appointment of Messrs. P. D. Vroom, T. J. Randolph, and Publius R. R. Pray, whose nominations were confirmed by the Senate on the 8th of March last. Commissions were sent to these gentlemen on the 14th of that month. Mr. Randolph declined accepting the one offered to him on the 17th, and Mr. James Murray was appointed on the 8th of April. Notice of Mr. Vroom's acceptance was received on the 1st, and of Mr. Murray's on the 10th, of April; of Mr. Pray's on the 11th of May. The first instructions to the board bear date of the 20th of May. Copies of these instructions, and of subsequent communications to them, are herewith submitted. It appears from the accompanying copy of a letter from them of the 24th of June, and of the paper enclosed in it, that they had assembled at Columbus, Mississippi, and issued a notice to claimants that they would enter upon the discharge of the duties assigned to them on the 16th of October, and that in the mean time the secretary of the board would receive such papers as individuals interested might wish to present. No general report has been received from them, nor any further advice of their proceedings, except a letter of the 28th ultimo, which reached the department on the 12th instant. I transmit a copy of this letter, and of the reply to it, although of date subsequent to the resolution of the Senate, under the impression that this course will be the most agreeable.

As it will evidently be impracticable for the board to complete the execution of the duties confided to them before the expiration of the period prescribed by the law, I would respectfully suggest, that the propriety and expediency of extending that period be submitted to Congress. In this connexion I beg leave to notice a letter of the 1st instant, just received from the commissioners, and of which a copy will be found among the accompanying papers. It suggests several amendments to the law of last session which, in their judgment, are important, but most of which, after the construction given by the department to that law, and the measures taken for carrying it into effect, are, in my view, unnecessary, and the others are not desirable. An informal intimation has been received from the same quarter, that the compensation of the commissioners is inadequate, considering the great expenses of travelling, and that mileage should be allowed them in addition.

I append a statement of the expenses that have been incurred, as required by the resolution under this law.

Very respectfully,
Your most obedient servant,
C. A. HARRIS,
Commissioner.

Hon. J. R. POINSETT,
Secretary of War.

LIST OF PAPERS

Accompanying the report of the Commissioner of Indian Affairs, of the 16th December, 1837, to the Secretary of War, respecting the proceedings that have taken place under the act of March 3d, 1837, concerning claims to reservations under the 14th article of the Choctaw treaty of 1830.

1. Letter from the Secretary of War, of the 14th March, 1837, transmitting commissions to Messrs. Vroom, Randolph, and Pray.
2. Letter from the Commissioner of Indian Affairs, of 16th March, 1837, to Messrs. Vroom and Randolph.
3. Letter from the Commissioner of Indian Affairs, of 1st April, 1837, to Hon. P. D. Vroom.
4. Letter from the Secretary of War, of the 8th April, to James Murray, Esq.
5. Letter from the Secretary of War, of the 12th of April, to James Murray, Esq.
6. Letter from the Secretary of War, of the 12th of April, to Hon. P. D. Vroom.
7. Letter from the Commissioner of Indian Affairs, of the 20th April, to Hon. P. D. Vroom.
8. Letter from the Commissioner of Indian Affairs, of 11th May, to Messrs. Vroom and Murray.
9. Letter from the Commissioner of Indian Affairs, of 11th May, to Hon. P. R. R. Pray.
10. Instructions from the Commissioner of Indian Affairs, of the 20th May, to Messrs. Vroom, Murray, and Pray, with the following papers, viz: Schedule of documents accompanying instructions; letters to Colonel Martin, of the 26th June, 3d September, and 11th October, 1833; opinion of the Attorney General, of 9th September and 1st November, 1831, and 27th June, 1836; extract of a letter of the 8th October, and one of the 23d November, 1836, to A. V. Brown.
11. Letter from Messrs. Vroom and Murray of the 23d May, to the Secretary of War.
12. Reply of the Secretary of War, of the 25th May, to the preceding letter.
13. Letter from the Commissioners, of the 24th June, and its enclosure.
14. Letter from the Commissioner of Indian Affairs, of the 19th July, to Messrs. Vroom, Murray, and Pray.
15. Letter from the Commissioner of Indian Affairs, of the 18th of October, to Messrs. Vroom, Murray, and Pray, with a copy of his letter of the 11th of the same month, to the Secretary of War, and of the endorsement made by the latter thereon.
16. Letter from the Commissioner of Indian Affairs, of the 10th November, to Messrs. Vroom, Murray, and Pray.
17. Letter from Messrs. Vroom and Murray, of the 28th November, to the Secretary of War.
18. Reply of the Commissioner of Indian Affairs, of 14th December, to the preceding letter.
19. Letter from Messrs. Vroom and Murray, of the 1st December, to the Secretary of War.
20. Statement showing the amount of expenses incurred.

No. 1.

WAR DEPARTMENT,
March 14, 1837.

SIR: I have the honor to transmit a commission from the President of the United States, constituting you a commissioner to adjust claims to reserves of land under the 14th article of the treaty with the Choctaw Indians, of September 27, 1830. Thomas J. Randolph, Esq., of Virginia, and Publius R. R. Pray, Esq., of Mississippi, will receive similar commissions. Your compensation will be at the rate of $3,000 a year. I will thank you to signify your acceptance or non-acceptance of this appointment. In the event of your acceptance, instructions for the execution of your duties will be forwarded to you by the Commissioner of Indian Affairs.

Very respectfully, &c.,

J. R. POINSETT.

Hon. PETER D. VROOM, *Somerville, New Jersey.*

[Same (changing names) to Thomas J. Randolph, Esq., Richmond, Virginia; Publius R. R. Pray, Esq., Jackson, Mississippi.]

No. 2.

WAR DEPARTMENT,
Office of Indian Affairs, March 16, 1837.

SIR: I have the honor to transmit to you copies of the act of Congress of March 3d, 1837, providing for the appointment of commissioners under the Choctaw treaty of 1830, and of a report made by the Committee on Indian Affairs on the same subject at the first session of the twenty-fourth Congress. They may furnish information respecting the nature of the duties confided to you by the commission forwarded from this department, which may influence your determination to accept or decline it. If you decline it, you will oblige me by returning these papers, as but few copies of them can be procured.

Very respectfully, &c.,

C. A. HARRIS,
Commissioner Indian Affairs.

Hon. P. D. VROOM, *Somerville, New Jersey.*

[Same to T. J. Randolph, Esq., now at Richmond, Virginia.]

No. 3.

WAR DEPARTMENT,
Office of Indian Affairs, April 1, 1837.

SIR: Your letter to the Secretary of War, of the 28th ultimo, has been referred to this office.

I have the honor to inform you that instructions will be prepared and transmitted to you at an early day. One of the gentlemen associated with

you in the commission, Mr. Randolph, has declined, and another has not yet been selected. From Mr. Pray no answer has been received.

Very respectfully, &c.,
C. A. HARRIS,
Commissioner Indian Affairs.

Hon. P. D. Vroom,
Somerville, New Jersey.

No. 4.

War Department,
April 8, 1837.

Sir: I have the honor to transmit a commission from the President of the United States, constituting you a commissioner to adjust claims to reserves of land under the 14th article of the treaty with the Choctaw Indians, of September 27, 1830. You will be associated with the Hon. P. D. Vroom, of New Jersey, and Publius R. R. Pray, Esq., of Mississippi. Your compensation will be $3,000 a year. I will thank you to signify your acceptance or non-acceptance of this appointment. In the event of your acceptance, instructions for the execution of your duties will be forwarded to you by the Commissioner of Indian Affairs.

Very respectfully,
Your most obedient servant,
J. R. POINSETT.

James Murray, Esq.,
Annapolis, Maryland.

No. 5.

War Department,
April 12, 1837.

Sir: I have had the honor to receive your letter of the 10th instant, accepting the commission transmitted to you on the 8th.

In reply to your inquiry, whether a few weeks can be allowed you for preparation, I beg leave to refer you to the enclosed extract of a letter of Gov. Vroom, one of your colleagues. It will apprise you of his views of the manner in which the duties of the commissioners might be executed, and which might be acted upon, if a majority concurred in them, and the secretary was stationed at some central point to receive papers, as they were prepared by claimants. I understand the instructions for the commissioners will be completed early in the next week, and I would recommend that you correspond with Gov. Vroom, at Somerville, New Jersey, in relation to the time and place of meeting. From your other colleague, Mr. Pray, no intelligence has been received, or probably will be, in time to influence your movements. If, after communicating with Gov. Vroom, there shall appear to be no reason to believe that any detriment to the public interests would

be caused by the delay, this department will readily acquiesce in your wish to postpone your departure for Mississippi for a few weeks. You will please to advise me of your determination.

Very respectfully, &c.,
J. R. POINSETT.

JAMES MURRAY, Esq.,
Annapolis, Maryland.

No. 6.

WAR DEPARTMENT,
April 12, 1837.

SIR: I have the honor to inform you that James Murray, Esq., of Annapolis, Maryland, has been appointed a commissioner in the place of Mr. Randolph.

Mr. Murray has intimated a wish to be allowed a few weeks for preparation, and from the enclosed copy of my reply to him, you will perceive that he has been advised to communicate with you, and be governed by the arrangements that both of you may determine to be best. I will thank you to correspond with him, and to inform me of the conclusion you arrive at.

Very respectfully, &c.,
J. R. POINSETT.

Hon. P. D. VROOM,
Somerville, New Jersey.

No. 7.

WAR DEPARTMENT,
Office of Indian Affairs, April 20, 1837.

SIR: Since writing you on the 12th instant, it has occurred to me, that, in the course of your correspondence with your colleague, Mr. Murray, you may have made some arrangements in relation to the secretary to be employed by the commissioners.

If you have, I would suggest that it might be well for you, with the secretary, to pass through Washington on your way to the Choctaw country, that he may examine the papers relating to the business which has been confided to the commissioners, and receive such explanations as may enable him to enter readily upon the discharge of his duties.

Very respectfully, &c.,
C. A. HARRIS,
Commissioner Indian Affairs.

Hon. P. D. VROOM,
Somerville, New Jersey.

No. 8.

WAR DEPARTMENT,
Office of Indian Affairs, May 11, 1837.

SIR: I have just received advices of Mr. Pray's acceptance of his appointment as associate commissioner with Mr. Murray and yourself. I have to request that you will meet the latter gentleman in this city on the 20th instant, when the papers which have been prepared will be delivered to you, and any verbal explanations given that you may request. The second Monday in June has been fixed for the assembling of the commissioners at Columbus, Mississippi, and Mr. Pray will be instructed to meet you there on that day.

Very respectfully, &c.,
C. A. HARRIS,
Commissioner Indian Affairs.

Hon. P. D. VROOM,
Somerville, New Jersey.

[Same to James Murray, Esq., Annapolis, Maryland, changing the name to Governor Vroom, in the second line.]

No. 9.

WAR DEPARTMENT,
Office of Indian Affairs, May 11, 1837.

SIR: Your letter of the 7th ultimo was received this morning, and has been referred to this office.

A commission, correctly made in your name, was sent to Jackson, Mississippi, on the 20th of March.

I have this day notified Governor Vroom and Mr. Murray, (the latter appointed in place of Mr. Randolph, who declined,) that the second Monday in June next had been fixed for the assembling of the commissioners at Columbus, Mississippi, and requested them to meet at this place on the 20th instant, to receive the papers that have been prepared for the board, and any explanations they might find necessary. You are requested to be at Columbus on the day indicated. It is proper for me to add that the compensation of the commissioners can date only from the day on which they take the oath prescribed in the second section of the act under which they have been appointed.

Very respectfully, &c.,
C. A. HARRIS,
Commissioner Indian Affairs.

P. R. R. PRAY, Esq.,
Pearlington.

No. 10.

WAR DEPARTMENT,
Office of Indian Affairs, May 20, 1837.

GENTLEMEN: Having accepted commissions authorizing you to adjust claims to reserves under the treaty with the Choctaws of 1830 you will

please to conform to these instructions in the execution of the duties prescribed in the act of March 3, 1837, under which you have been appointed, a copy of which I enclose.

The documents described in the accompanying schedule will enable you to understand what has been done in the execution of this branch of the treaty, and, with one that Colonel Martin, the locating agent at Chocchuma, will be directed to furnish you, showing all the conditional locations made by him under the instructions of the 13th of October, 1834, embrace all in this office of any importance to you.

The constructions given to certain clauses in this treaty, the rules and principles laid down in the instructions to the locating agents shown by the accompanying papers marked G and D, and the clear terms of the law under which you have been appointed, render it unnecessary for me to enter more fully into this subject.

You will please to repair to Columbus by the second Monday in June, and there determine the course of proceeding that will insure the most prompt and effectual discharge of your duties, adjourning from place to place as the nature of the service may require.

Notices of your appointment will be given to Colonel Martin, to A. V. Brown, Esq., now acting as a commissioner to certify contracts for the sale of Choctaw reserves, to W. Armstrong, Esq., agent for the Choctaws west of the Mississippi, and to the registers and receivers, and they will all be requested to co-operate with you, and render any services in their power.

I will thank you to notify me of the name of the gentleman selected to be the secretary of the board.

There is no appropriation directly applicable to the object, but, as something will be required for contingent expenses, as office rent, expresses, fees, stationery, postage, &c., the sum of $500 can be drawn for by you, for which you will account by regular vouchers. Forms of the account and voucher are herewith enclosed.

The documents are so numerous that one copy only can be prepared in season, and this has been handed to Governor Vroom and Mr. Murray.

I respectfully request that you will keep this office apprised of your proceedings; and, particularly, that you will forward a copy of the regulations that you may adopt for the government of your proceedings, &c., as soon as you have agreed upon them.

Very respectfully, &c.,

C. A. HARRIS,

Commissioner Indian Affairs.

Hon. P. D. Vroom,
Somerville, New Jersey.

P. R. R. Pray,
Pearlington, Hancock county, Mississippi.

James Murray,
Annapolis, Maryland.

Schedule of documents prepared for commissioners under the 14th article of treaty with Choctaws of 1830.

A. Copy of the treaty of the Choctaws of 1830.

B. Copy of Armstrong's registers, exhibiting the names of all the Indians owning farms, their locality, quantity of acres cultivated, entire number of the family, &c.

Ward's register of the names of those persons who applied for the benefit of the 14th article of the said treaty, is embraced in the document containing Armstrong's. See page 186.

Indians on Armstrong's list of claims in the different chiefs' districts, are properly entitled to the benefits of the 14th article, (although located under the 19th,) if they prove that they made application to Ward within the proper time. But, in that case, the location under the 19th must be considered as part of that under the 14th. For further explanation of Ward's and Armstrong's registers see paper marked N.

C. List of persons who have produced to the department Ward's certificates of the fact of their having made application within the time required by the treaty, but whose names are not on the register forwarded by him to the department, but for whom lands have been or will be located.

D. Instructions to Colonel George W. Martin, of the 26th of June, 3d of September, and 11th of October, 1833.

E. List of locations under the 14th article which have received the approval of the President.

F. List of locations under the 14th article suspended for further examination.

G. List of locations under the 19th article and the supplement which have received the approval of the President.

H. List of locations under the 19th article and the supplement suspended for further examination. These four lists are transmitted to show the locations which have been made for the Indians named on said lists. Those names on list F, which are not on Ward's register, nor on list C, will be subject to the investigation of the commissioners. Those Indians on Ward's register who claim to have had more children than is there stated, or the ages of whose children are incorrectly reported, must substantiate the fact to the satisfaction of the commissioners, who, in that case, will report the circumstance.

I. Copies of the Attorney General's opinions of the 9th of September and 1st of November, 1831, and 27th of June, 1836, relative to the construction of the 14th and 19th articles, and the evidence necessary to be produced by claimants under said 14th article, for the purpose of showing that they signified to the agent within due time their intention to remain and become citizens of the States.

K. Document No. 138 of the House of Representatives, 23d Congress, 1st session, containing the messages of the President to that body of the 6th and 18th of February, 1835, "transmitting a report from the Secretary of War, containing the evidence of certain claims to reservations under the 14th article of the treaty of 1830 with the Choctaws, which the locating agent has reserved from sale, in conformity with instructions from the President."

L. Copies of evidence relating to the claims of sundry Indians to reservations, not embraced in the preceding document.

M. Copies of instructions to A. V. Brown, of the 8th of October and 23d of November, 1836.

N. Copy of a letter from F. W. Armstrong, of the 16th June, 1835, to the Commissioner of Indian Affairs.

O. Copy of a letter from Samuel Gwin, of the 14th June, 1836, to the Secretary of War.

P. Report of Mr. Bell, of the Committee of Indian Affairs, of the House of Representatives, May 11, 1836, in relation to claims for reservations under the 14th article of the Choctaw treaty of 1830.

C. A. HARRIS,
Commissioner.

OFFICE OF INDIAN AFFAIRS,
May 20, 1837.

DEPARTMENT OF WAR,
June 26, 1833.

SIR: You are hereby appointed to make the selections of the locations of the tracts of land granted to the Choctaws by the 14th, 15th, and 19th articles of the treaty of September 27th, 1830, concluded at Dancing Rabbit creek.

Your compensation will be five dollars per day, to include services and expenses, while engaged in this duty; and you are authorized to employ an interpreter, if one attached to the agency cannot be detailed to attend you, and to allow him two dollars and a half per day, in full for his expenses and services. These claims will be paid upon accounts, certified by both yourself and the interpreter.

The department is informed that plats of the surveys of one hundred and twelve townships have been received at the General Land Office, and that the exterior lines of one hundred and seventy six townships have been run, the sectioning of a majority of which is in progress. Copies of the plats received here will be forwarded for you from the Land Office, to the care of General Coffee. You will please to apprise the department of your address, that copies of the other plats may be sent to you, direct.

Upon application to Colonel Ward, or William Armstrong, Esq., at the old agency, you will be furnished with copies of registers of the different classes of reservees in the three districts, and may obtain all the information you will require in the fulfilment of this duty. These registers are supposed to be complete, and you will be governed by them in the location and assignment of reservations in all cases, unless otherwise directed by this department.

The general provisions of the treaty are, that the reservations shall be bounded by sectional or quarter sectional lines of survey, and include the improvements of the reservees. An exception to this rule occurs in the 15th article, and in the first clause of the 19th, by which two of the four sections grated to the three chiefs and to Colonel Folsom, are to be located "on unoccupied unimproved land." You will consult the wishes of these persons in locating these sections, taking care not to interfere with the pos-

sessory rights of any other Indian. The half sections and quarter sections, allowed to heads of families in the 14th article, for their children, will adjoin the location of the parents.

The number of reservees provided for in the 3d and 4th clauses of the 19th article is limited, and the extent of their reservations is proportioned to the number of acres in cultivation. You will learn from the registers the names of the persons entitled to land under the several classes. In locating three quarter sections granted to those who shall have cultivated thirty acres or more, you will observe that the treaty provides they shall be "contiguous and adjoining." The reservations allowed under these two clauses, are also to be located so as to include that part of the improvements which contains the dwelling-house. If the contingency should happen, contemplated in the latter part of the fourth clause, that the number of reservees should exceed the number stipulated for, you will call upon one or more of the chiefs of the district to which they belong, to decide who shall be excluded. For instance, one half section is granted to the cultivators of from twenty to thirty acres, the number not to exceed four hundred. If there should be four hundred and fifty claimants, the chiefs are to decide upon the fifty whose claims must be rejected.

The 5th clause provides for the assignment to the captains, whose cultivated possessions may entitle them under the previous clauses to less than a section, of an additional half section. This half section must adjoin the tract which includes their improvements and dwelling-house. The registers also will show you the names and number of the orphans entitled to reservations.

If any of the Choctaws have no improvements, or if the location of a tract would include the improvements of more than one of them, in that case you must exercise a sound discretion respecting the person to whom such tract shall be assigned. It is desirable that the parties interested should decide for themselves, or agree to submit to the determination of their chief. But if they will not do either, perhaps the best method will be to draw lots in their presence. It is also desirable that the reservees of each district should be located together, and as near to each other as the preservation to each of them of his improvements will permit.

You will establish such permanent marks upon each reservation as will show its extent and boundaries. You will also open a new register and enter upon it the names of the reservees, and the number of the sections, half sections, or quarter sections, as marked on the plats of survey assigned to them respectively; the originals of this register you will leave with the sub-agent, William Armstrong, Esq.; a copy you will forward to this department.

The department relies upon your zeal and exertions to execute every part of your duty under these instructions, in a manner accordant with the obligations of the Government, and satisfactory to the Indians.

I enclose a copy of the treaty.

Very respectfully, &c.,

JOHN ROBB,
Acting Secretary of War.

To GEORGE W. MARTIN, Esq.,
Care of Gen. John Coffee, Florence, Alabama.

DEPARTMENT OF WAR,
September 3, 1833.

SIR: I have received your lettter of the 9th ultimo, suggesting for consideration and decision several questions connected with the execution of your duty in locating the reservations granted by the Choctaw treaty. I have submitted the matter to the President, and his views I now communicate to you.

1st. Where there is more than one occupant upon improvement within the same legal subdivision, the rule of preference suggested by you seems to be a just one. Let the person whose improvement is the oldest, if that fact can be ascertained, receive the tract, and let the reservations of the others be located as near as may be upon such of the adjacent land as may be fit for cultivation. But if the fact of the priority of settlement cannot be satisfactorily ascertained, then let lots be drawn for the tract containing the improvement, and let the location of the others be fixed as already directed.

2d. In locating the reservations of children, which are to adjoin the tracts of their parents, it is not necessary that the reservations of a parent and child should adjoin each other along the whole extent of one of their lines. It is sufficient that they actually adjoin, whether upon the corners or the sides.

3d. Where a dwelling-house, with a portion of the improvement, is in one legal subdivision, and the residue of the improvement in another, the tract containing the dwelling-house must be located for the claimant. This case is expressly provided for in the treaty, and it is impossible for the President to give any other directions.

4th. Whether the tract upon which the dwelling-house is situated be valuable or not, there is no power to assign to the occupant any other land. The treaty itself has laid down the rules, and there can be no departure from it.

It is to be regretted that Colonel Leflore, or any other Choctaw, has taken up impressions that it is competent for the Executive so essentially to vary the stipulations of the treaty as would be necessary to make the changes in the third and fourth questions you have proposed. The language of the treaty is plain and explicit, and nothing is left for the Executive but to carry it into effect. While the President is determined faithfully to extend to the Indians all the advantages it promises them, he is determined also to adhere to the arrangement which both parties, with a full knowledge of the subject, have made.

5th. All streams which, by the return of the surveyors, make fractional sections and subdivisions, will be considered as making fractions in all cases of Indian locations. Where the stream is not of such a size as to make fractions for the purposes of sale, it will not make them in the case of Indian locations.

6th. You inquire, what is to be done in those cases where the reservees have left the country? I answer, let the locations be made in all cases agreeably to the terms of the treaty, and to the return made by Major Armstrong, and now in your possession, of the persons entitled to tracts of land. Those persons who decline accepting the land, and claim the other benefits secured by the treaty, will have the right of so doing when application is made to them. Some evidence of their relinquishment is necessary, and when the location is made, the proper agent will be directed

to ascertain the determination of such, and to provide for them the land or its equivalent.

7th. The business of locating the reserves for the orphans has been committed to Mr. Trahern, and it is therefore unnecessary to give you any instructions respecting it.

By inserting upon each subdivision in the several township maps the name of the person to whom it is assigned, and by returning duplicate lists, one to the surveyor general and one to the department, showing the names of each person, and by describing the tract by its proper number in its township, range, and section, I think the several reservations will be sufficiently identified.

8th. Where a reservation is to include three quarter sections, it is the opinion of the President that these three quarters must be in the same section.

I see no objection to the suggestion you make respecting the mode of locating claims not fixed by the treaty, where the persons entitled have the right of selection; and where more than one apply for the same tract, let the claim be determined by lot. I observe, however, that there are very few of these cases. In general, where the location is not fixed, it does not depend upon the choice of the claimant, but upon your discretion.

I am aware the subject committed to you is difficult and important, but I rely upon your zeal and exertions to accomplish it in a manner best calculated to promote the welfare of the Indians, and the proper interest of the Government. Make the locations where you think right. Do not suffer yourself to be influenced by the applications or importunities of white persons. The Government recognise no sale which has been made, nor will they until the locations are completed, and a system adopted and made public for protecting the Indians and their conveyances, and of insuring to them a just consideration for their property. Arrange your business, therefore, with the Indians alone.

I am apprehensive that there will not be time for you to complete this before the arrival of the time fixed for the public sales. In that event, you will please to give notice to the proper registers and receivers, and they will be instructed to postpone the sale to such a period as you may consider necessary. It is to be hoped, however, the districts can be designated, the sales of which may go on without interfering with the Indian locations.

Very, &c.,

LEWIS CASS.

To George W. Martin, Esq.,
Near Tuscahoma, Washington county, Mississippi.

Department of War, *October* 11, 1833.

Sir: I have received your letters of the 15th and 22d ultimo, together with a printed notice enclosed in the former.

I perceive the embarrassments under which you labor, and am satisfied you will proceed in the execution of your duty in the best manner the means of information in your power will permit. You doubtless, ere this, have received a copy of the register prepared by Major Armstrong. This will furnish you with an authentic list of all the claims to which any of the Choctaws are entitled; and you will be guided by it, and by the treaty, in

making the locations. I perceive you have selected certain persons to aid you in the receipt of applications. The full effect you mean to give to these applications, I do not understand. I presume, however, it is merely to guide you in reserving from sale the proper tracts. You will, under no circumstances, allow a reservation to a person whose right is not recognised in the register of claims prepared by Major Armstrong, or by name in the treaty. If, however, you should find that this mode of receiving claims would aid you in the execution of your duty, you are at liberty to pursue it, taking care that a very small compensation is promised to the persons employed, as their labor must be comparatively trifling.

There are three modes of location pointed out by the treaty: one is specific, depending on the situation of the improvement annexed to it, and will require no discretion in fixing it; another is at the option of the reservee, and here, of course, you must be guided by his own choice; and a third is general, and confided entirely to you. With respect to the latter, you will observe that the President desires to fulfil the stipulations of the treaty in a spirit of justice and good faith to the Indians. He neither wishes all the valuable tracts to be selected for the Indians which give value to the country, nor such ones assigned to them as are unfit for cultivation. Wherever you have a discretion in the location, let the tracts selected be of the average quality of the country, and such as are fit for all farming purposes, and upon which the Indians can obtain a proper support. Let no white man interfere with you in these locations. Receive no representations from any one. Any conveyances made by the Indians are, as yet, wholly void; and the President does not recognise the right of a single person claiming lands in the Choctaw country under a deed or conveyance from any Indian. The representations of the Indians themselves, you are at liberty to receive, and it is proper they should be received; but act for yourself, after you have procured all necessary information.

You will consider that clause in your instructions of the 26th of June, which requires you to establish permanent marks upon each reservation, as applicable only to the plans of surveys, and not to the tracts of land themselves. By entering the name of each reservee upon his location, the object of that provision will be attained.

It is important that the Indian reservations should be brought as much together as possible, and you will not lose sight of this object. If too much scattered, the Indians will be exposed to great inconveniences; whereas, by living in the same neighborhoods, they can be better protected in their rights and secured from injuries. Let, therefore, no individual reservations, in the location of which you can exercise a discretion, be made apart from others.

By the treaty, persons entitled to reservations, in consequence of improvements, are to locate them upon the legal subdivisions which contain their dwelling-houses. If two or more persons occupy dwelling-houses upon the same tract, let them make an amicable arrangement for preference, if they are willing to do so. If this cannot be done, let the tract be assigned to the oldest settler, where that fact can be determined; where it cannot, you must draw lots for choice.

I have read your printed notice, and do not see anything objectionable in the course you have marked out. Your views will, of course, be limited by these instructions.

On inquiry, I find you had been advised, by a letter of July 1, 1833, that

it was not in the power of the General Land Office to furnish you with plats in time for the locations, and that you had been referred to the surveyor general to procure them. I trust that you have been supplied, ere this, with all the requisite information on the subject.

I am, sir, respectfully,
Your obedient servant,
LEW. CASS.

Col. GEORGE W. MARTIN,
Chocchuma, via Rankin, Mississippi.

OFFICE OF THE ATTORNEY GENERAL,
September 9th, 1831.

SIR: In obedience to your direction, I have examined and considered the claim of Mr. Pitchlynn, under the treaty with the Choctaws, as stated in his letter of the 18th of August, 1831.

The stipulations in the 14th and 19th articles of the treaty, when considered together, are not entirely free from ambiguity, and I have felt some difficulty in coming to a satisfactory conclusion.

But upon comparing the provisions of the two articles together, and considering the general object and scope of the treaty, those two articles appear to be intended for different classes of persons. The 14th article provides for those who desire to remain and become citizens of the United States, and their title is made to depend upon a residence five of years on the land, with the intention of becoming citizens. The provision for the persons named or described in the 19th section is absolute, and is made for those who may not desire to remain and become citizens of the United States. Their title is not to depend on future residence, or the intention to become citizens.

Any head of a family, if he desires to become a citizen, may avail himself of the provisions of the 14th article. But I think the same person cannot take the benefit of the provision made for both classes. If he determines to remain and become a citizen of the United States, and takes the land allotted to persons of that description, he cannot at the same time take the benefit of stipulations which were made in his favor on the ground that he might not desire to remain and become a citizen. If he elects to take under the 14th article, he must relinquish his claim under the 19th. It could not have been the intention of the treaty to allow the heads of families mentioned in the 19th article to come in also under the 14th, so as to allow a double provision for them. And if Mr. Pitchlynn is allowed to take under both articles, the heads of families mentioned in the 19th article must be allowed the same privilege; and this, in my opinion was not intended to be given to them.

Mr. Pitchlynn may, therefore, in right of his wife and children, avail himself of the provision in the 14th article. But if he does so, he must relinquish what is given in the 19th. He may take either, but cannot take both.

This construction of the treaty appears to me to be warranted by its lan-

guage, and to be also just and fair to all parties; and it is respectfully submitted for your consideration.

I am, sir, with the highest respect,
Your obedient servant,
R. B. TANEY.

To the PRESIDENT.

OFFICE OF THE ATTORNEY GENERAL,
November 1, 1831.

SIR: In answer to the questions proposed to me in your note of yesterday, and which have grown out of the execution of the Choctaw treaty, of September, 1830, I beg leave respectfully to submit the following opinion.

1. I think the President has the power to approve the sale of any of the reserves made in the supplemental treaty. Although this power is not given in express terms by that instrument, yet the whole treaty must be construed together as forming but one treaty; and it would seem from the nature and character of the reserves made in the supplemental agreement, that it was the intention of the contracting parties to place them on the same footing with the like reservations made before. The reserves in question are not made on the condition of remaining and becoming citizens, but are absolute, and made in favor of persons who may be expected to remove. The power to sell, therefore, although not expressly given to them, must in justice be implied, as the reservations would otherwise be of little value to the parties. And if the power to sell is implied, the limitation on that power which requires the approval of the sale by the President ought to be implied with it, because it was introduced, I presume, for the protection of the Indians, and to prevent them from selling their property for a trifling and inadequate consideration.

As regards the mistake in the name, if there had been no precedent on the subject, I should have said that proof might be received for the purpose of showing that Alexander F. Magagha is the person who was intended to be provided for under the description of T. Magagha, in the supplemental treaty, and that the statement of Major Eaton and General Coffee would be sufficient to establish the fact, and justify the President in approving the sale made by Alexander F. Magagha. But I find that a similar mistake in a name occurred in a treaty held with the Potawatomie tribe, in September, 1828; and upon the discovery of the mistake it was deemed necessary to bring the subject before Congress, who passed a law authorizing the payment to be made to the person intended. (See act of March 25, 1830, ch. 46.) Under such circumstances, it is perhaps not proper to depart from established precedent, and the error committed in the christian name of Magagha had better be left for the correction of Congress.

2. The President may, in my opinion, approve the sales of reservations under the treaty, before they are surveyed, and the boundaries actually ascertained. It is, however, a matter in his discretion, and if in his judgment either the public interest, or the interest of the Choctaw nation, would be promoted by refusing to approve of any sale until the land is actually laid off to the person entitled, he may unquestionably withhold it until

the survey has been made, and the boundaries ascertained, and then approve, or refuse to approve, the previous sale, as to him shall seem just.

3. The language of that clause in the treaty which gives the President the power to pay fifty cents an acre for reservations, would, according to its strict and literal interpretation, seem to imply that the reservations for the chiefs and others named in the treaty were not embraced by this provision. But it is manifestly for the interest of the Choctaws that this power of purchase by the Government should exist, as to all the reservations; because, if the persons entitled are unable to sell before their removal, and prefer accepting the fifty cents per acre rather than wait for individual purchasers, it enables the Government to give them this compensation as soon as they arrive at their new abodes, when, for the most part, it would be very convenient for them to receive it.

In an instrument of this sort, and made with such persons as the Choctaws, I do not think that strict and technical rules of construction should be applied to it. It ought to be expounded liberally, according to its spirit, so as to give the Indians all the advantages and facilities in their removal which appears to have been contemplated by the general scope and spirit of the treaty. And this rule of construction is sanctioned by the clause at the end of the 8th article, which stipulates that whenever well founded doubts shall arise, they shall be construed most favorably towards the Choctaws. And regarding the subject in this light, and looking to the objects of the treaty, I think that according to a fair and liberal interpretation of its terms and provisions, the President has the power to accept from any of the chiefs named, a relinquishment of his title, and to direct him to be paid fifty cents per acre for it.

I am, sir,
With the highest respect,
Your obedient servant,
R. B. TANEY.

To the PRESIDENT.

ATTORNEY GENERAL'S OFFICE,
June 27th, 1836.

SIR: In answer to the question presented in the statement of Mr. Lyon, enclosed in your letter of the 23d instant, I have the honor to state, that as no particular evidence is required by the treaty itself, nor by any act of Congress, to be produced by persons claiming the benefit of the 14th article of the Choctaw treaty, for the purpose of showing that they actually signified to the agent, within due time, their intention to remain and become citizens of the States, I think the department at liberty to receive, and that it ought to receive, *any credible evidence, documentary or oral, coming from any disinterested source*, which may tend to establish that fact; and that all Choctaw heads of families who shall prove by any such evidence that they actually and in good faith signified to the proper agent, in due time, their intention to remain, and who have resided the proper time on the land, are

entitled to the reservations secured by the treaty, notwithstanding their names may not have been taken by the agent on his list.

I am, sir,

Very respectfully,

Your obedient servant,

B. F. BUTLER.

The Hon. LEWIS CASS,
Secretary of War.

Mr. Lyon's letter is returned.

Extract of a letter from the Commissioner of Indian Affairs, to A. F. Brown, Esq., dated October 8th, 1836.

"Reserving for the further action of the department the cases included in the statements of the General Land Office, and those in which sales have been made, you can proceed to certify contracts for the others that have been approved. The principles and rules by which you will be regulated in the discharge of this duty are clearly stated in the letter of this department to the President, marked E, and the accompanying memorandum. As Col. Vose, the commanding officer at Fort Towson, and Mr. William Armstrong, the acting superintendent of the Western Territory, have advised this office that sales had been made in their respective neighborhoods, I would recommend that you give early notice, through the latter, of your appointment, and of the times and places when you will act upon the conveyances held by persons there. I shall send copies of this letter, and of papers E, to Mr. Armstrong, that he may understand the general principles upon which you will act, and be able to give proper information to the parties interested. It has also been represented that Indians who have sold their rights prior to emigrating, had sold them a second time subsequent thereto. Some contracts, admitted by the holders to be of this character, have been presented here. It is alleged by some of the Indians that they have never been paid, or have been paid only in part, the amount of the consideration stipulated in the first contract. In all these cases you will institute a rigid scrutiny to ascertain the facts, and you will certify no contract not clearly within the rules laid down in paper E.

"The manner in which you shall execute the duties must be determined by yourself. But I would suggest for your consideration the expediency of making a preliminary inquiry, in the first instance, at each place where you appoint a meeting, and that you open a register or docket, entering upon it the names of the Indians and of the purchasers, and a brief of the circumstances presented in evidence. This record being left open for general inspection, while you proceed to another place, it will be more probable that, upon your return, and at the final hearing, the true history of each case will be developed."

WAR DEPARTMENT,
Office Indian Affairs, November 23, 1836.

SIR: I have received your letter of the 1st instant. I presume that you

have communicated with Colonel Martin and Mr. Grayson, and ascertained whether the latter can act as your secretary.

The preparation of the instructions in relation to the proof of residence, required in the 14th article of the treaty with the Choctaws of 1830, has been delayed to obtain the opinion of the present Secretary of War upon the subject. He thinks that only a general direction can be given, viz: that the proof the intention of the reservees to remain upon the lands located for them must be of a character to satisfy your own mind, and that it must be given by credible witnesses, in the form of affidavits.

You will receive with this a copy of the register of reservees under the 14th article of the treaty, transmitted by Colonel Ward to this office, which has been adopted by the President, as conclusive upon the action of the Executive. If other claimants present themselves, or if any persons upon it claim a greater quantity of land than it shows him to be entitled to, they must be referred to Congress for relief.

You will observe the numbers on this register, and let every paper exhibited to you bear the number of the particular case to which it relates. The register to be prepared by you will show the name of each reservee, having the number on Ward's register attached to it, the names of the witnesses, the substance of their depositions, your action upon it, with the reasons upon which you based it. This register you will forward to this office.

I transmit copies of two opinions of the Attorney General, given in 1831, of the existence of which this office was not until recently aware. From the proximity of the dates to the date of the letter of the Commissioner of the General Land Office, referred to in the memorandum forwarded to you with your instructions, it is to be presumed they formed the basis of that letter. But no letter of the President to the Attorney General or to the Commissioner of the General Land Office can be found. Both of them may have some bearing upon the business that has been confided to you.

Very respectfully,

Your most obedient servant,

C. A. HARRIS, *Commissioner.*

A. V. BROWN, Esq.,
Columbus, Mississippi.

No. 11.

WASHINGTON, *May* 23, 1837.

SIR: Being now on our way to the State of Mississippi, as commissioners, under the act of Congress entitled "An act for the appointment of commissioners to adjust the claims to reservations of land under the 14th article of the treaty of 1830, with the Choctaw Indians," we beg leave respectfully to inquire at what time it will be considered by the department that our salaries commence—whether from the acceptance of the appointment, the time of leaving home, or the time of organizing at Columbus?

We would state to the department that, from the period of our accepting the appointment, we have found it necessary to abandon altogether the business in which we were engaged, and have been sedulously employed in making arrangements for a long journey, and an unexpected absence

from home; that we have considered ourselves as the servants of the Government, and held ourselves in readiness to execute its orders as soon as received; and that we left home immediately on being informed that our instructions were prepared. There has been no delay on our part; and, under these circumstances, it appears to us but just that our compensation should commence from the time of acceptance, and not later.

We embrace this opportunity to inquire of the department whether the Board of Commissioners will be at liberty to call on the marshal of the United States, in the district of Mississippi, for such aid as they may require of an executive officer? The act states that the commissioners "shall have full power to summon, and cause to come before them, such witnesses as they may deem necessary, and have them examined on oath," &c. To carry out the intention of the law, and do justice to the Government, it is evident that the services of some officer will be required. Unwilling witnesses will pay but little attention to a process served by one having no legal authority. Can the board appoint an officer, and clothe him with power? we doubt the right to do so. Can they rely with safety upon the State officers, such as sheriffs, or constables? Would even these have legal right under our authority to execute compulsory process, protect witnesses, and preserve the dignity of the board by promptly enforcing their orders? If not, the board might find themselves in a very unpleasant situation, if not entirely powerless.

It will be necessary, in all probability, to have an interpreter. There is no provision in the act for such officer. Will the board be authorized to procure one, if occasion shall require, and compensate him out of the contingent fund placed at their disposal? If not, what other course may they with propriety adopt?

The commissioners who are now here propose to proceed to the place designated in their instructions, and after organizing, to digest and adopt a plan of operations, and cause full notice of it to be given to claimants and all others interested, so that they may be prepared to meet the board and present their claims and proofs at certain times and places to be specified in the notice. This being done, the commissioners think it would be advisable to retire temporarily from the State, and resume their labors as early in the autumn as the term of notice they may deem necessary will allow. It is their impression that such course would best protect the interests of the Government, and promote the just rights of all parties. If they could be advised that the course, as proposed, meets the approbation of the department, they would feel sensibly relieved.

With the highest respect,
We are, sir,
Your obedient servants,
P. D. VROOM,
J. MURRAY.

Hon. J. R. POINSETT.

No. 12.

WAR DEPARTMENT,
May 25th, 1837.

GENTLEMEN: I have had the honor to receive your letter of the 23d inst. The plan of operations proposed by you is approved; you will be allowed

to employ an interpreter at a reasonable compensation, to be paid out of the contingent fund under your control; and your salaries will commence at the date of the acceptance of your appointments.

In reference to your inquiry whether you will be at liberty to call on the marshal of the United States in the district of Mississippi for such aid as you may require of an executive officer, it is the opinion of this department that you are authorized to require the services of the officers of the United States, and, through the district attorney, those of the marshal named to aid you in affecting the object of your appointment, and in executing the law under which you act.

It is by law made the duty of the marshal to execute all lawful precepts directed to him, and issued under the authority of the United States. The act creating the commission which you compose, empowers the commissioners to "summon witnesses and cause them to come," which, in the view of the department, gives the same force as that possessed by a court to summon, and if the witness should not appear, to cause him to come by compulsory process issued to the marshal through the district attorney. Such a process is a lawful precept, and one which the marshal is equally bound to execute.

Very respectfully, &c.,

J. R. POINSETT.

P. D. VROOM and JAMES MURRAY, Esqs.,
Commissioners, &c., Washington City.

No. 13.

COLUMBUS, MISSISSIPPI,
June 24th, 1837.

SIR: We have the honor to inform you that we organized and opened our office at this place on the 22d, and on the same day appointed Mr. Jonathan Pinkney, of Maryland, secretary to the board.

After consultation we have come to the conclusion that it would not be expedient to proceed in the hearing of claims before the 16th October next, and have agreed upon the enclosed notice to be published in the newspapers of the county.

We have the honor to be, respectfully,
Your obedient servants,

P. RUTILIUS R. PRAY,
J. MURRAY,
P. D. VROOM.

Hon. J. R. POINSETT.

(Notice enclosed.)

The commissioners appointed to adjust claims to reservations of land under the fourteenth article of the treaty of 1830, with the Choctaw Indians, hereby give notice that they will meet at their office in the town of Columbus, in Mississippi, on the 16th day of October next.

Their office will continue open *from* this time, and their secretary will receive any applications or claims which claimants may think proper to

make or file. Cases will be docketed in the order presented, and taken up in the same order, if ready.

Claimants will, if required, be heard by counsel.

Summons for witnesses will be issued by the secretary, upon application to him.

Claimants and their children, entitled to reservations, must in all cases appear before the commissioners in person.

The district attorney of the United States for the State of Mississippi will act as counsel for the United States.

For the information of claimants, the 14th article of the treaty of Dancing Rabbit creek, and the 1st, 6th, and 7th sections of the act of March 3d, 1837, under which the commissioners are acting, are published with this notice.

P. RUTILIUS R. PRAY,
J. MURRAY,
P. D. VROOM.

No. 14.

WAR DEPARTMENT,
Office of Indian Affairs, July 19, 1837.

GENTLEMEN: I have the honor to aknowledge the receipt of your letter of the 24th ultimo, with the copy of your notice to claimants under the Choctaw treaty of 1830.

Very respectfully, &c.

C. A. HARRIS,
Commissioner of Indian Affairs.

Messrs. P. R. R. PRAY,
J. MURRAY,
P. D. VROOM,
Columbus, Mississippi.

No. 15.

WAR DEPARTMENT,
Office of Indian Affairs, October 18, 1837.

GENTLEMEN: I have the honor to enclose a copy of a letter addressed by this office to the Secretary of War, on the 11th instant, from the endorsement on which you will perceive that it was submitted by him to the President, and his direction obtained upon the subjects therein presented. Under this direction it becomes my duty to state the views of the department respecting the execution of the duties confided to you, upon some points not noticed in the letter from this office of the 20th of May.

The President having expressed the opinion that it was competent for him to designate other places than Columbus for your meetings, with the single restriction that they be within the State of Mississippi, I have to request that you will direct your inquiries to ascertain the places at which

your sessions will accommodate the greatest number of claimants, and afford to yourselves the best facilities for prosecuting your investigations. Gentlemen well acquainted with that section of the country and the condition of the claimants have concurred in naming Jasper county as one of the most convenient points. But it may be necessary for you to assemble in each of the Indian towns. It seems to be an obvious duty of the Government to cause the act of Congress which was designed for the benefit of the reservees, to be executed in the manner least expensive and burdensome to them. They ought not, if it can be avoided by changing the place of your session, to be obliged to transport themselves, their children, and witnesses beyond a short distance. It has been represented that there are some claimants in Alabama, and you will please, therefore, select some place as near the line of that State as practicable, for their accommodation. It is not intended to restrict you by naming particular points, but, having presented the considerations which, in the judgment of the department, should be borne in mind, and influence your proceedings, to commit the matter to your discretion.

The papers heretofore sent to you contain so full information respecting what has been done, and the principles that have regulated past action, that it is unnecessary for me to add but a single remark, and that in anticipation of a difficulty that recently presented itself to commissioners acting under similar circumstances. In the event of the absence, or indisposition, or disagreement in opinion, of one your number, the department entertains no doubt of the competency of a majority of the board to execute the trusts confided to it.

I enclose a copy of a resolution of the Senate, and would urge you to use every exertion to satisfy the solicitude it indicates, that your duties shall be finally executed the present season.

In addition to the amount already placed at your disposal for contingent expenses, the sum of $1,000 has been given to Gov. Vroom.

Very respectfully, &c.,

C. A. HARRIS,
Commissioner Indian affairs.

Hon. P. D. Vroom, James Murray,
and P. R. R. Pray, Esqs., *Columbus, Mississippi.*

War Department,
Office of Indian Affairs, October 11, 1837.

Sir: The commissioners appointed to adjust claims to reserves under the fourteenth article of the Choctaw treaty of 1830, by virtue of the provisions of the act of Congress of March 3, 1837, have fixed the sixteenth of the present month as the day on which they will meet for the performance of their duties. It is understood from Mr. Murray, who is now in this city, that the commissioners are of the opinion that Columbus having been designated in their original instructions as the place of meeting, they cannot assemble at any other place; and that the authority given to the President in the act of Congress to fix the place having been exercised, it is not competent for him to give any further direction. Many representations have been received at this office of the absolute necessity, so far as the rights of claimants and the proper discharge of the duties of the Govern-

ment are concerned, of the commissioners meeting at various points of the Choctaw country. As they entertain the opinion above stated, which does not coincide with the views entertained by this office, it is desirable the matter should be submitted to the President, and his opinion obtained as to the extent to which the action of the commissioners may be regulated by the instructions of this department.

Very respectfully, &c.,

C. A. HARRIS,
Commissioner Indian Affairs.

Hon. J. R. POINSETT,
Secretary of War.

Copy of the endorsement made by the Secretary of War.

Having submitted this question to the President, he instructs me to say that he regards the right to remain in him to change the place of meeting of the commissioners whenever and to whatever spot he may deem expedient, provided the place designated is within the State of Mississippi, and to prescribe such regulations as he may think proper for carrying into effect each and all of the provisions of the act of Congress of the 3d of March, 1837, under which the commissioners were appointed.

J. R. P.

No. 16.

WAR DEPARTMENT,
Office of Indian Affairs, November 10, 1837.

GENTLEMEN: In order that your respective accounts, as well as that of your secretary, may be relieved from the charges made against you on the books of the Second Auditor for the several payments heretofore made upon drafts drawn upon this office, it becomes necessary that you make up accounts according to the forms presented to Mr. Murray last spring, and transmit them to this office. I would suggest that the first account of each of you be made up to the 30th of September last, and in future at the end of each quarter, always giving credit for the sums received by you on account.

This course is rendered necessary in consequence of the appropriation being indefinite; and without the early rendition of accounts, the money already advanced cannot be refunded to the appropriation fund whence they have been borrowed.

Very respectfully, &c.,

C. A. HARRIS,
Commissioner Indian Affairs.

Messrs. VROOM, MURRAY, and PRAY,
Commissioners, &c., Columbus, Mississippi.

No. 17.

COLUMBUS, MISSISSIPPI, *November* 28, 1837.

SIR: We have the honor to inform you that the commissioners appointed under the fourteenth article of the Choctaw treaty arrived at this place at the dates following, viz: General Pray on or about the 28th of October, and the undersigned on or about the 5th and 12th instant. Various unforeseen occurrences, such as personal indisposition and the low state of the water, prevented our attendance at an earlier period. On the 6th instant, a majority of the commissioners being present, the board was organized for the transaction of business, and there being nothing to occupy its attention, it was adjourned from day to day until the 9th, when General Pray, having been voted for at the general election in this State, for judge of the court of appeals, and believing that he had been elected, left this place for Jackson, intending to return if not elected; but otherwise to resign his commission as a member of the board immediately. The board was further adjourned until the 13th instant, when the remaining member having arrived, it was again organized for business. Sundry persons, alleging themselves to be representatives of some of the Indian claimants, appeared before the board for the purpose of being heard in reference to the most proper and convenient place or places at which the board should hold its sessions. The hearing was deferred until the arrival of the attorney of the United States, who was daily expected. He had been in attendance here in October, at the request of the board, but left in consequence of the non-attendance of the commissioners at the time appointed. On the 22d, the attorney of the United States arrived, and since that time the board has been engaged in making arrangements for the procurement of proper interpreters, and in hearing the statements of parties interested as to the propriety of removing from this town, and as to the most eligible places for meeting in the Choctaw country within the bounds of this State, and also in attending to various other preliminary matters. After hearing the allegations of the claimants or those who represent them, and also of the attorney of the United States, we have concluded to change the location of the board, and hold its sessions at different points within the limits of the Choctaw country, more desirable, and probably more convenient to the Indian claimants. The following places have been selected viz: B. Leflore's, in the county of Leake; Garlandsville, in the county of Jasper; and Marshall's, in the county of Kemper. This arrangement, it is hoped and believed, will be satisfactory to a very large number, if not the whole of the claimants.

At this stage of the business, notice was received of the election and resignation of General Pray, one of the commissioners; and the serious question was presented to those who remained, whether they could legally proceed to execute the responsible trust confided to the commissioners under the act; and, after mature deliberation, they came to the conclusion that they had no power to proceed until the vacancy should be filled. They were of opinion, on general principles, that, where a trust, even of a public nature, is confided to three persons, the whole number must be appointed and be in existence, to authorize two to act. In the law under which they were appointed, they saw nothing to alter this principle or to lead to a different conclusion. The act provides for the appointment of three commissioners, who are authorized to perform certain specific duties.

It gives no power to a majority. Such power could be taken only by inference, even were all the members of the commission in existence. But there is nothing, we apprehend, to warrant the assumption of it by two, when the board is not full. If two only had been appointed, they could not legally have organized, or done any act under their commission. Their investigation and report would not have been a compliance with the act. When, by death or resignation, the number is reduced to two, we are of opinion that, if the board can be considered as having any legal existence, the power to act is suspended until the vacancy be filled.

Such are our conclusions, drawn from general principles and from the act under which we have been appointed.

These conclusions are fortified, as we conceive, by the construction of the department given to the same act. In a communication to the board, under date of October 18, 1837, it is stated as the opinion of the department, that, in case of the absence, indisposition, or disagreement of any one of the commissioners, a majority may proceed. This is evidently founded on the supposition that the whole number is in existence. The resignation of one of the commissioners does not, in our judgment, constitute an absence, within the meaning of the department; nor would the act of two, under such circumstances, be the act of a majority. It would appear to us that the construction of the department was intended to apply only to cases where, the board being full, one might casually be absent, or, being present, might differ in opinion from the other two. In either case a majority may act. The fact that the case which has occurred is not within the limit of the construction thus given, is persuasive evidence of the opinion of the department that it had no authority, in such event, to instruct two commissioners to proceed before the vacancy was filled.

It may be proper to add that, in the judgment we have formed, we are sustained by the concurrent opinion of the attorney of the United States.

In consequence of this unforeseen difficulty, we have adjourned all further proceedings until the first Monday in January; at which time, the board will meet at B. Laflore's, in Leake county. It is supposed that, by that time, the person to be appointed in the place of Gen. Pray may be able to join us.

Very little delay will be occasioned by the course we have felt constrained to adopt. The adjournment of the board from this place, for the greater convenience of the claimants, in conformity with recent instructions from the department, necessarily requires a reasonable notice to be given of the time and place of future meeting. The additional time that must elapse before the arrival of a third commissioner will not probably exceed two or three weeks; and, although we greatly regret even this delay, we are satisfied it is of small moment when viewed in connection with the immense amount of property claimed, and the importance of having the proceedings of the board above all exception or dispute; so that, when reviewed by Congress, as they must be, or by courts of justice, as may be the case, in prosecutions for perjury, no part of them may be found to be *coram non judice*, or in any way irregular.

We have the honor to be,

With great respect,

Your obedient servants,

P. D. VROOM,

J. MURRAY,

Commissioners.

No. 18.

WAR DEPARTMENT,
Office Indian Affairs, December 14, 1837.

GENTLEMEN: I have the honor to acknowledge the receipt of your letter, of the 28th ultimo, to the Secretary of War. He has considered, attentively, the reasons you have assigned for adjourning to the first Monday in January next, without being able to assent to their force; on the contrary, he is clear in the opinion that it is not only competent but proper for you to proceed in the execution of your duties as commissioners. He has directed me to communicate his views to you, and to instruct you to resume, and continue in the discharge of the functions assigned to you, notwithstanding the vacancy that has occurred in the board, and although it may not be filled. You will find, in the shortness of the unexpired term of your commissions, an urgent reason for great assiduity and diligence on your part, to comply with the requisitions of the law under which you are acting.

Very respectfully,
Your most obedient servant,
C. A. HARRIS, *Com'r.*

Hon. P. D. VROOM and
JAMES MURRAY, Esq.

No. 19.

COLUMBUS, MISSISSIPPI,
December 1st, 1837.

SIR: We have the honor to submit to you our views in relation to some amendments which we think it necessary should be made in the law of the last session of Congress, establishing our commission, which we think, if adopted by Congress, will enable the commissioners more promptly and efficiently to perform the duty assigned to them.

1st. An amendment authorizing two of the board to act, in case of the death, resignation, or absence of one of the commissioners.

2d. Authority to the board, or a majority of the commissioners, to adjourn their sessions to such place or places as in their judgment the interest of the Government or claimants may require.

3d. Authority to the board, or a majority, to adjourn to such place, beyond the State of Mississippi, as they may think proper, to make up their report, after they shall have taken all the testimony.

4th. To give the board the powers of a court of record, to preserve order, punish contempts, &c.

5th. Authority to any member of the board, or the district attorney, to administer oaths to witnesses, in any matter before the board.

6th. Authority to employ one or more interpreters, and an agent or agents to collect testimony for the United States.

In relation to the first amendment proposed, we do not think it necessary to add any thing to the communication addressed to you by the last mail.

In relation to the second, we have only to observe, that it is apparent to us that the commissioners can better judge of the advantages of particular places for the hearing of these cases, than the Commissioner of Indian Affairs, at so great a distance.

With regard to the third, we think that the opinion of the board, after all the testimony shall have been taken, will as well be made up at one place as another, and that it would be a great accommodation to the undersigned to be permitted to devote the time necessary for this purpose, nearer to their homes and business, as by the shortest possible time in which they can get through the testimony, they will have been a long time absent; it may also be necessary to consult papers and maps only to be found at the seat of Government.

The fourth amendment, giving power to the commissioners to preserve order, we think very necessary, as the questions litigated before the board will many of them be exciting in their character, and may lead to great confusion and interruptions, unless the commissioners should have clear power promptly to preserve peace and decorum.

The fifth, to give authority to any one of the commissioners, or to the district attorney, to administer an oath, we do not now think to be clearly given by the statute to the board of commissioners, as such. The expressions in the law you will observe are, "That the commissioners shall have full power to summon and cause to come before them such witnesses as they may deem necessary, *and to have them* examined upon oath." For what reason the power to administer an oath could have been denied to the commissioners, we are at a loss to determine, nor do we think such was the intention of the framers of the law. It is not clear, however, that the power is given, and as prosecutions for perjury are contemplated by the law for false swearing, it would be well that the law on the subject should admit of but one interpretation.

The authority to employ interpreters, and an agent to collect testimony for the United States, is probably incident to the board from the peculiar character of the subjects of investigation committed to them. It would be proper, however, in the opinion of the commissioners, that it should be expressed clearly, to prevent difficulty with the accounting officers of the Treasury.

No contingent fund was provided by the law of last session. The undersigned are at a loss to say what appropriation will be necessary to cover contingent expenses, but think that a less sum than five thousand dollars will not be sufficient. The expense of employing agents, and indeed expenses of all kinds in this country are very great. We understand that interpreters cannot be employed at a less expense than six to eight dollars per day.

The magnitude of the claims, however, which will come before us, are such as to render expenses of this kind as of no comparative moment.

An early action of Congress upon these subjects, we think of great importance.

We have the honor to be,
Very respectfully, &c.,
J. MURRAY,
P. D. VROOM.

Hon. J. R. POINSETT,
Secretary of War.

RD 1.48/AD

No 20.

STATEMENT showing the amount of expenses incurred under the act approved 3d March, 1837, entitled "An act for the appointment of commissioners to adjust the claims to reservations of land under the 14th article of the treaty of 1830, with the Choctaw Indians."

Due to P. D. Vroom, for his services as commissioner, from the 28th March to 13th October, 1837, at $3,000 - - -	$1,625
Due to P. R. R. Pray, for his services as commissioner, from 7th April to 13th October, 1837, at $3,000 - - - - -	1,550
Due to James Murray, for his services as commissioner, from 10th April to 13th October, 1837, at $3,000 - - - - -	1,525
Due to Jonathan Pinkney, for his services as secretary, from 22d June to 13th October, 1837, at $1,500 - - - - -	459
Advanced to the commissioners on account of contingent expenses	1,500
Total - -	$6,659

NOTE.—No accounts have been rendered by the commissioners for settlement.

OFFICE OF INDIAN AFFAIRS,
December 14, 1837.

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